

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

ARTHUR STEPHEN BARFIELD,	:	
	:	
Plaintiff	:	
	:	
VS.	:	NO. 1:05-CV-84(WLS)
	:	
Sheriff JAMIL SABA, <i>et al.</i> ,	:	PROCEEDINGS UNDER 42 U.S.C. § 1983
	:	<u>BEFORE THE U.S. MAGISTRATE JUDGE</u>
Defendants	:	
	:	<u>ORDER</u>

Plaintiff **ARTHUR STEPHEN BARFIELD**, an inmate at the Dougherty County Jail (“DCJ”) in Albany, Georgia, has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. By order dated June 29, 2005, this Court instructed plaintiff to provide the Court with a certified copy of his prison trust fund account statement within thirty days of the order. Plaintiff has timely returned the form, an examination of which reveals that plaintiff is unable to pay the cost of commencing this action. Accordingly, plaintiff’s application to proceed *in forma pauperis* is hereby **GRANTED**. However, plaintiff must nevertheless pay the full amount of the \$250.00 filing fee, as explained later in this order.

Plaintiff alleges that he suffers from a vein disease. Upon his arrival at DCJ in August 2004, plaintiff reported his condition to the medical personnel who conducted plaintiff’s initial medical screening examination. Plaintiff alleges that his vein disease can be controlled by wearing compression stockings. Without the stockings, according to plaintiff, he risks, among other things, swelling in the legs, bleeding under the skin, ulcers, and infection. Plaintiff complains that he repeatedly asked the defendants to provide him with the compression stockings and that they refused to do so for five months. As a result, in December 2004, plaintiff’s veins did bleed, causing his leg

to swell to the size of a basketball and plaintiff's fever to spike to 103 degrees. Plaintiff was taken to a hospital, where plaintiff underwent surgery to cut open and drain the abscess that had developed in plaintiff's leg and to also scrape off plaintiff's bone, which was black. According to plaintiff, the hospital doctor advised plaintiff that the DCJ waited too long for treatment and that "all this could have been avoided with proper care by the jail."

Plaintiff developed recurrent leg infections in 2005, during which time his leg hemorrhaged almost daily. According to plaintiff, he bled so much on July 29, 2005, that his cell resembled "a murder scene." Medical personnel, at times, allegedly refused to call plaintiff to the infirmary for dressing changes, which resulted in plaintiff bleeding on the floor or his bed linens.

Plaintiff also suffers from colon polyps. Due to plaintiff's vein condition, in December 2004, the hospital placed plaintiff on blood thinners that, in turn, aggravated his colon. Upon his return to the DCJ from the hospital, plaintiff started hemorrhaging from his colon. Plaintiff alleges that he

repeatedly asked medical personnel to return him to the hospital and that said personnel refused because "there was no one to take [plaintiff] to the hospital" and an ambulance "was too expensive." Plaintiff's blood pressure "bottomed out" and he fainted. Plaintiff was ultimately taken to the hospital, where he was started on an IV immediately. The hospital doctor prescribed antibiotics, which allegedly took the DCJ 10 days to start. Plaintiff suffered from additional colon problems in September 2005.

Plaintiff describes his vein condition as extremely painful. He believes that the DCJ delayed ordering compression stockings and refused any permanent treatment (i.e., surgery) for plaintiff's condition because of the cost. As relief, he seeks proper treatment for his medical problems.

Where a prison provides some medical care, the plaintiff has a difficult burden in establishing a constitutional violation for deliberate indifference to serious medical needs. “Medical treatment violates the Eighth Amendment only when it is ‘so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.’” *Faison v. Rosado*, 129 Fed. Appx. 490, 491 (11th Cir. 2005) (quoting *Harris v. Thigpen*, 941 F.2d 1495, 1501 (11th Cir.1991)).

Construing the complaint liberally in favor of the plaintiff, however, this Court concludes that plaintiff has made sufficient allegations to withstand the frivolity review. Accordingly, plaintiff’s complaint will be allowed to go forward against the named defendants, Jamil Saba, Dan Haggerty, and Peggy Chester.

Upon review of plaintiff’s complaint, it is HEREBY ORDERED AND DIRECTED that service of all pleadings be made as provided by law upon the defendants, and that the defendants file a Waiver of Reply, an Answer, or such other response as may be appropriate under Rule 12 of the FEDERAL RULES OF CIVIL PROCEDURE, 28 U.S.C. § 1915, and the *Prison Litigation Reform Act*.

It is further ORDERED AND DIRECTED that a copy of this order be served upon plaintiff’s custodian, if any.

DUTY TO ADVISE OF ADDRESS CHANGE

During the pendency of this action, each party shall at all times keep the clerk of this court and all opposing attorneys and/or parties advised of his current address. Failure to promptly advise the Clerk of any change of address may result in the dismissal of a party’s pleadings filed herein.

DUTY TO PROSECUTE ACTION

Plaintiff is advised that he must diligently prosecute his complaint or face the possibility that

it will be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. Defendants are advised that they are expected to diligently defend all allegations made against them and to file timely dispositive motions as hereinafter directed. This matter will be set down for trial when the court determines that discovery has been completed and that all motions have been disposed of or the time for filing dispositive motions has passed.

FILING AND SERVICE OF MOTIONS, PLEADINGS, AND CORRESPONDENCE

It is the responsibility of each party to file original motions, pleadings, and correspondence with the Clerk of court; to serve copies of all motions, pleadings, and correspondence (including letters to the Clerk or to a judge) upon opposing parties or counsel for opposing parties if they are represented; and to attach to said original motions, pleadings, and correspondence filed with the Clerk a certificate of service indicating who has been served and where (i.e., at what address), when service was made, and how service was accomplished (i.e., by U.S. Mail, by personal service, etc.). The Clerk of Court will not serve or forward copies of such motions, pleadings, and correspondence on behalf of the parties.

DISCOVERY

Plaintiff shall not commence discovery until an answer or dispositive motion has been filed on behalf of the defendants from whom discovery is sought by the plaintiff. The defendants shall not commence discovery until such time as an answer or dispositive motion has been filed. Once an answer or dispositive motion has been filed, the parties are authorized to seek discovery from one another as provided in the FEDERAL RULES OF CIVIL PROCEDURE. The deposition of the plaintiff, a state/county prisoner, may be taken at any time during the time period hereinafter set out provided prior arrangements are made with his custodian. **Plaintiff is hereby advised that failure to submit**

to a deposition may result in the dismissal of his lawsuit under Rule 37 of the Federal Rules of Civil Procedure.

IT IS HEREBY ORDERED that discovery (including depositions and interrogatories) shall be completed within 90 days of the date of filing of an answer or dispositive motion by the defendant(s) unless an extension is otherwise granted by the court upon a showing of good cause therefor or a protective order is sought by the defendants and granted by the court. This 90-day period shall run separately as to each plaintiff and each defendant beginning on the date of filing of each defendant's answer and/or dispositive motion. The scheduling of a trial may be advanced upon notification from the parties that no further discovery is contemplated or that discovery has been completed prior to the deadline.

Discovery materials shall not be filed with the Clerk of Court. No party shall be required to respond to any discovery not directed to him or served upon him by the opposing counsel/part. The undersigned incorporates herein those parts of the **Local Rules** imposing the following limitations on discovery: except with written permission of the court first obtained, **INTERROGATORIES** may not exceed TWENTY-FIVE (25) to each party, **REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS** under Rule 34 of the FEDERAL RULES OF CIVIL PROCEDURE may not exceed TEN (10) requests to each party, and **REQUESTS FOR ADMISSIONS** under Rule 36 of the FEDERAL RULES OF CIVIL PROCEDURE may not exceed FIFTEEN (15) requests to each party. No party shall be required to respond to any such requests which exceed these limitations.

REQUESTS FOR DISMISSAL AND/OR JUDGMENT

Dismissal of this action or requests for judgment will not be considered by the court absent

the filing of a separate motion therefor accompanied by a brief/memorandum of law citing supporting authorities. Dispositive motions should be filed at the earliest time possible, but in any event no later than thirty (30) days after the close of discovery unless otherwise directed by the court.

DIRECTIONS TO CUSTODIAN OF PLAINTIFF

Following the payment of the required initial partial filing fee or the waiving of the payment of same, the Warden of the institution wherein plaintiff is incarcerated, or the Sheriff of any county wherein he is held in custody, and any successor custodians, shall each month cause to be remitted to the Clerk of this court twenty percent (20%) of the preceding month's income credited to plaintiff's account at said institution until the \$250.00 filing fee has been paid in full. In accordance with 28 U.S.C. § 1915(b)(2), plaintiff's custodian is hereby authorized to forward payments from the prisoner's account to the Clerk of Court each month until the filing fee is paid in full, provided the amount in the account exceeds \$10.00.

IT IS FURTHER ORDERED AND DIRECTED that collection of monthly payments from plaintiff's trust fund account shall continue until the entire \$250.00 has been collected, notwithstanding the dismissal of plaintiff's lawsuit or the granting of judgment against him prior to the collection of the full filing fee.

PLAINTIFF'S OBLIGATION TO PAY FILING FEE

Pursuant to provisions of the *Prison Litigation Reform Act*, in the event plaintiff is hereafter released from the custody of the State of Georgia or any county thereof, he shall remain obligated to pay any balance due on the filing fee in this proceeding until said amount has been paid in full; plaintiff shall continue to remit monthly payments as required by 28 U.S.C. § 1915(b)(2). Collection from the plaintiff of any balance due on the filing fee by any means permitted by law is hereby authorized in the event plaintiff is released from custody and fails to remit payments. In addition, plaintiff's complaint is subject to dismissal if he has the ability to

make monthly payments and fails to do so.

**ELECTION TO PROCEED BEFORE THE
UNITED STATES MAGISTRATE JUDGE**

Under Local Rule 72, all prisoner complaints filed under provisions of 42 U.S.C. § 1983 are referred to a full-time United States Magistrate Judge for this district for consideration of all pretrial matters. In addition, 28 U.S.C. § 636(c)(1) authorizes and empowers full-time magistrate judges to conduct any and all proceedings in a jury or nonjury civil matter and to order the entry of judgment in a case upon the written consent of all the parties. Whether the parties elect to proceed before a magistrate judge or retain their right to proceed before a U.S. district judge is strictly up to the parties themselves.

After the filing of responsive pleadings by the defendants, the Clerk of court is directed to provide election forms to the parties and/or to their legal counsel, if represented. Upon receipt of the election forms, each party shall cause the same to be executed and returned to the Clerk's Office within fifteen (15) days. Counsel may execute election forms on behalf of their clients provided they have such permission from their clients. However, counsel must specify on the election forms on whose behalf the form is executed.

SO ORDERED, this 25th day of October, 2005.

/s/ Richard L. Hodge

RICHARD L. HODGE

UNITED STATES MAGISTRATE JUDGE

NOTICE TO ALL PARTIES

PURSUANT TO THE COURT'S ORDER REGARDING DISCOVERY SET OUT ABOVE, NO DISCOVERY SHALL BE PERMITTED IN THIS CASE UNTIL AN ANSWER OR DISPOSITIVE MOTION (e.g., MOTION TO DISMISS, MOTION FOR SUMMARY JUDGMENT, MOTION FOR JUDGMENT ON THE PLEADINGS) HAS BEEN FILED BY THE DEFENDANT(S).

PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE, DISCOVERY (DEPOSITIONS, INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, REQUESTS FOR ADMISSIONS, ETC., AND RESPONSES THERETO) SHALL NOT BE FILED WITH THE CLERK OF COURT. NOTE THAT THIS IS A CHANGE IN THE PROCEDURE HERETOFORE FOLLOWED IN THIS DISTRICT.

DO NOT FILE ANY DISCOVERY WITH THE COURT UNLESS YOU ARE SPECIFICALLY DIRECTED TO DO SO BY THE COURT OR UNLESS FILING IS NECESSARY TO SUPPORT OR CONTEST A MOTION TO COMPEL DISCOVERY, OBJECTION TO DISCOVERY, DISPOSITIVE MOTION, OR SIMILAR MOTION. THE CLERK IS DIRECTED TO RETURN ANY SUBMITTED DISCOVERY TO THE PARTY SUBMITTING IT UNLESS IT IS FILED PURSUANT TO AN ORDER OF THE COURT OR IN SUPPORT OF A MOTION TO COMPEL, OBJECTION TO DISCOVERY, DISPOSITIVE MOTION, OR SIMILAR MOTION.

